IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 920 of 1999

in

SPECIAL CIVIL APPLICATION No 2879 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL Sd/-
and
Hon'ble MR.JUSTICE D.H.WAGHELA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

1 to 5 No

GUJARAT AYURVED VIKAS MANDAL

Versus

SURYABEN BHAGUBHAI SOLANKI

Appearance:

MR KEHUL GANDHI for NANAVATI ASSOCIATES
for Appellant
MR VD NEWADA with MR MP GUPTA for Respondent

CORAM : MR.JUSTICE B.C.PATEL
and
MR.JUSTICE D.H.WAGHELA

Date of decision: 02/03/2000

ORAL JUDGEMENT (Per D.H.Waghela, J.)

This Letters Patent Appeal has been filed challenging the order of the learned Single Judge summarily rejecting the petition of the appellant. The appellant had challenged the award of the Labour Court, Ahmedabad in Reference (LCA) Application No.785 of 1986 by way of a special civil application under Articles 226 and 227 of the Constitution of India.

2. The learned counsel appearing for the appellant has submitted that the respondent was employed as a part-time sweeper for a monthly salary of Rs.100 since 1.10.1984. The respondent was discharged and relieved from the job on 30.9.1985 upon closure of the unit where she was serving. When the institution was restarted in September 1986, the respondent was given a chance to rejoin by a written letter dated 26.8.1986. The said letter of offer is at Annexure-D to the petition. It is submitted in the appeal that disregarding the bona fide offer of reemployment as also the documentary evidence placed before the Labour Court, the respondent was awarded reinstatement with backwages; and the learned Single Judge has also not taken into consideration the aspects of burden of proof and the documentary evidence placed on record by the appellant before the Labour Court. We were taken through the award of the Labour Court and it was pointed out that the appellant had relied upon the evidence recorded in another proceeding between the same parties. It was admitted that the appellant had not led any evidence but, as submitted on their behalf, there was sufficient documentary evidence to establish the bona fide offer of reemployment and, in view of that, the order granting full backwages could not have been sustained.

3. It is seen from the award of the Labour Court that the depositions of witnesses on both sides recorded in another proceeding being Recovery Case No.903 of 1986 have been submitted and relied upon. Besides that, the respondent was examined on oath but the appellant had chosen not to cross-examine her. Hence, the deposition of the respondent remained unchallenged. Thereafter, the appellant had ceased to participate in the proceedings despite a special notice issued to them to give an opportunity in the interest of justice. Thus, considering the documentary and oral evidence on record, the Labour Court came to the conclusion that the respondent was entitled to reinstatement with backwages.

Even as the crucial letter offering reemployment to the respondent was pressed into service before us, it was conceded that the respondent was required to report for duty on 1.9.1986 by the letter dated 26.8.1986, which was sent by registered post. It is expressly mentioned in the said letter that after 1.9.1986, if the respondent did not resume her duties, alternative arrangement was to be made. It is nowhere clarified either in the writ petition or in the memo of the present appeal as to when the aforesaid letter was served upon the respondent. In these circumstances, there is no material to come to the conclusion that the said letter offering reemployment was a bona fide offer served in time upon the respondent to resume her duties on 1.9.1986. No subsequent offer is stated to have been made during the pendency of the legal proceedings. The Labour Court appears to have properly reached to the findings of fact on the basis of material placed before it and in view of failure of the appellant in even cross-examining the respondent, the challenge to the findings of fact can hardly be sustained.

4. In view of the facts and circumstances as discussed above, we find no reason to admit this appeal or interfere with the summary dismissal of the petition by the learned Single Judge. Hence, the appeal is dismissed with costs quantified at Rs.500/- to be paid by the appellant to the respondent.

Sd/-

(KMG Thilake)

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